IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1570 of 2004

Arivukanni .. Revision Petitioner/PW1

vs.

1.Saravanan .. Respondent 1/Accused I
2.Shanmugam .. Respondent 2/Accused 2

3.The Sub-Inspector of Police,
Chittamoor Police Station,
Crime No.27/2002 .. Respondent3/Complainant

Prayer: This Revision has been preferred against the order dated 21.1.2004 in C.A.No.74 of 2003 passed by the learned Additional Distrct & Sessions Judge, (FTC.NO.I), Chengalput, reversing the judgment dated 5.11.2003 made in C.C.No.152 of 2002 on the file of the Judicial Magistrate, Mathuranthagam.

For Petitioner : Mr.S.Kalyana Raman
For Respondents : Mr.V.R.Balasubramanian, Addl.Public Prosecutor (for R3)

Mr.D.J.Venkatesan for Mr. V. Raghavachari(for R1 & R2)

ORDER

This Revision has been preferred against the judgment in C.A.No.74 of 2003on the file of the Additional District & Sessions Judge, (FTC.No.I,) Chengalput. The complaint preferred by P.W.1-Arivukanni, the wife of the accused, was registered by the Sub-Inspector of Police, G-3 Chittamoor Police Station under Crime No.27/2002 under Section 498(A) IPC. The case was taken on file by the learned Judicial Magistrate, Mathuranthagam, as C.C.No.152 of 2002 and on appearance of the accused copies under Section 207 of Cr.P.C., were furnished to the accused and when the charges under Section 498(A) IPC was explained to the accused and when questioned, the accused pleaded not guilty.

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2. On the side of the prosecution P.W.1 to P.W.7 were examined and Ex.P.1 to Ex.P.3 were marked.

3. The complainant-Arivukanni, as P.w.1, would depose that marriage between her and the accused Saravanan took place on 15.3.2001 and it was a registered marriage and after the marriage she and her husband were leading a separate life at Chethupakkam and the marriage was consummated and she delivered a male child on 21.6.2001 in Government hospital at Chengalput and that her husband never took her and the child to her in-laws' house, but by saying that he is suffering from chest pain the accused insisted her to bring Rs.1,00,000/- for getting treatment from her parents' house. She would depose that since she could not get money from her parents' house, the accused took her to her parents house and deserted her, which necessitated her to file a complaint before the Chittamoor police and that Ex.P.1 is her complaint.

4. P.W.2 is the father of P.W.1. According to him, the registered marriage between P.W.1 and the accused took place on 15.3.2001 and that no one from the accused's family attended the marriage and after the marriage both P.W.1 and the accused lived happily at Chethupakkam and that after the marriage P.W.1 had delivered a male child on 21.6.2002. According to P.W.2, the accused had left P.W.1 in his (P.W.2) house on one day at 1.30 am and that P.W.1 had informed him(P.W.2) that the accused had demanded Rs.1,00,000/- to meet the expenses for his heart surgery. He would further depose that thereafter, he went to the accused and requested him to live with his daughter P.W.1 amicably. But the accused had refused to take back P.W.1 and that he convened a panchayat for amicable settlement between P.W.1 and the accused, but the accused had not heeded to the advice of the panchayators and that he took P.w.1 to the police station and the complaint was preferred by his daughter P.w.1.

5. P.W.3 is the mother of P.W.1. She has also corroborated the evidence of P.W.1 and P.W.2.

6. P.W.4 is one of the panchayators, who had mediated P.W.1 and the accused. But he would depose that panchayat did not fructified. Ex.P.2 is the decision taken in the panchayat.

7. P.W.5 is also another panchayator, who would corroborate the evidence of P.W.4.

8. P.W.6 has not supported the case of the prosecution. Hence, he was treated as hostile witness.

9. P.W.7 is the Sub-Inspector of Police, who had registered the case on the basis of Ex.P.1 under Cr.No.27 of 2002 under Section 498(A) IPC. He had arrested the accused on 3.2.2002 and

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produced before the Judicial Magistrate for judicial remand. He had examined the witnesses and recorded their statements and after completing the investigation, he has filed the charge sheet on 27.3.2002 against the accused under Section 498(A) and also under Section 4 of the Dowry Prohibition Act. Ex.P.3 is FIR.

10. When incriminating circumstances were put to the accused, he would deny his complicity with the crime. The accused has not let in any evidence on his side. After going through the oral and documentary evidence available before her, the learned trial judge has come to a conclusion that the prosecution has proved the guilt of the accused under Section 498(A) IPC and under Section 4 of DP Act, and accordingly convicted A1 under Section 498(A) IPC and sentenced to undergo 2 years RI and imposed a fine of Rs.500/- with default sentence and also convicted A1 under Section 4 of DP Act and sentenced to undergo 2 years RI and a fine of Rs.500/- with default sentence and convicted A2 under Section 498(A) IPC and sentenced to undergo 2 years RI and a fine of Rs.500/- with default sentence and acquitted A2 under Section 248(1) of Cr.P.C., from the charges under Section 4 of DP Act. Aggrieved by the findings of the trial Court both A1 and A2 have preferred an appeal in C.A.No.74 of 2003 before the Additional Session Judge (FTC.No.I), Chengalput. The first Appellate Court after scanning the evidence and also giving due deliberation to the submissions made by the counsel on either side, has come to the conclusion that the charges levelled against both A1 & A2 were not proved by the prosecution beyond any reasonable doubt and accordingly allowed the appeal thereby setting aside the conviction and sentenced imposed by the trial Court against A1 & A2 there by setting both A1 & A2 at liberty, which necessitated the complainant-P.W.1 to prefer this revision. The State has not preferred any appeal over the judgment of the first appellate Court in C.A.No.74 of 2003 on the file of the Additional Sessions Judge, (FTC.No.I), Chengalput.

11. Heard Mr.S.Kalyana Raman learned counsel appearing for the revision petitioner and Mr.D.J.Venkatesan learned counsel appearing for respondents 1 & 2 and Mr.V.R.Balasubramanian, Addl.Public Prosecutor and considered their rival submissions.

12. Now the point for determination in this revision is whether any prima facie case has been made out against the accused to warrant conviction under Section 498(A) IPC and under Section 4 of Dowry Prohibition Act?

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13. The Point:- The Revision has been preferred against the judgment of acquittal passed by the first appellate Court. Under such circumstances, the important point to be considered in this revision is whether the findings of the learned first appellate Court is perverse in nature. P.W.1 in her evidence would admit that she became pregnant even before the marriage with accused. This fact was also admitted by her parents who examined before the trial Court as P.W.2 and P.W.3 respectively. Before the trial Court P.W.1 would depose that after the marriage they lived happily for few months and within four months from the date of registration of the marriage she gave birth to a male child at the government hospital at Chengalput and since they belong to different community the accused, her husband, never took her to her in-laws' house, but both of them lived happily in a house at Chethupakkam. It is the definite case of P.W.1 that her husband-accused asked her to bring Rs.1,00,000/- from her parents' house to meet the expenses for getting treatment for his chest pain. That is the only allegation of demand of dowry by P.W.1 in the box before the trial Court. But this allegation is conspicuously absent in the complaint-Ex.P.1 preferred by her before the police on 3.2.2002. In Ex.P.1-complaint P.w.1 has no where stated that the accused had demanded her to bring Rs.1,00,000/- from her parents' house to meet the expenses for taking treatment for chest pain. She would further state in Ex.P.1-complaint that after she gave birth to a son considering her poverty the accused had removed her son from her custody to her in-laws' house, but a few lines later in the same complaint-Ex.P.1 she would state that the accused had taken out a house at Pudur village for rent and allowed her and her child to live their alone and everyday the accused used to visit his parents' house leaving her and her child alone in the house. Apart from this there is absolutely no allegation of any demand of dowry or any other cruelty meeted out by her at the hands of the accused. The allegation that the accused had removed her son from her legal custody is a patent lie seen from the subsequent narration of facts by her in Ex.P.1-complaint itself. While in the box P.W.1 has not complained of any other cruelty meeted out by her at the hands of the accused. The learned first appellate Court taking into consideration all these facts has come to the correct conclusion that the charges levelled against both the accused have not been proved by the prosecution beyond any reasonable doubt and accordingly allowed the appeal thereby setting aside the conviction and sentence imposed by the trial Court in C.A.No.74 of 2003, which in my considered opinion neither illegal nor infirm to warrant any interference from this Court in this

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revision. Point is answered accordingly.

14. In the result, the revision fails and the same is dismissed confirming the judgment of the first appellate Court in C.A.No.74 of 2003 on the file of the Additional District & Sessions Judge, (FTC.No.I), Chengalput.

Ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

to

1.The Principal Session Judge, Chengalput.

2.The Addl.Dist & Sessions Judge, (FTC.No.I),
Chengalput.

3.The Judicial Magistrate, Maduranthagam.

4.The Chief Judicial Magistrate, Chengalput.

5.The Sub-Inspector of Police,
Chittamoor Police Station,

6.The Public Prosecutor,
Madras High Court.

+ one cc to Mr. S. Kalyanaraman, Advocate sr no. 28020
+ one cc to Mr. R. Raghavachari, Advocate sr no. 29206

GG(CO)
NM(08.05.07)

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